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STATUTORY INSTRUMENTS

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**1995 No. 1019**

**The Local Government Pension Scheme Regulations 1995**

**PART K**

**INTERCHANGE ETC**

*Preliminary*

**Interpretation**

**K1.** In this Part, unless the context otherwise requires—

“fund authority” means—

- (a) in the application of regulations K2 to K12 to a person, the body maintaining the pension fund to which he was a contributor immediately before he ceased to be employed in his local government employment or, if that fund has been closed, the body which would be liable to pay him his pension in respect of that employment if he had been entitled to receive payment of such a pension when he ceased to be employed in his local government employment, and
- (b) in the application of regulations K13 to K19 to a person, the body maintaining the pension fund to which he became a contributor after he ceased to be employed in his non-local government employment or, if that fund has been closed—
  - (i) if when the fund was closed he was not employed in local government employment, the body which would be liable to pay him his pension in respect of the local government employment in question if he had been entitled to receive payment of such a pension when he ceased to be employed in that employment; and
  - (ii) otherwise, the body maintaining the pension fund to which he became a contributor when the fund was closed;

“local Act scheme” has—

- (a) in relation to any time before 25th March 1972, the same meaning as in the Act of 1937, and
- (b) in relation to any time on or after that date, the same meaning as in section 8 of the Superannuation Act 1972(1);

“local government employer”, in relation to a person who is, or has been, employed in local government employment, means the body which is, or is treated as being, the employing authority or former employing authority for the purposes of the Acts of 1937 to 1953 or, as the case may be, the local Act scheme or these regulations;

“pension” does not include an allowance, grant or gratuity;

“service” means service or employment with any employer;

“state scheme premium” has the same meaning as in the Pension Schemes Act 1993(2).

### *Transfers out*

#### **Outwards transfers**

**K2.**—(1) Subject to regulation K4, where a person has ceased to be a member by virtue of—

- (a) ceasing to be employed in local government employment, or
- (b) a notification under regulation B12 (leaving the Scheme),

and the conditions in paragraph (2) are satisfied, then the fund authority shall pay a transfer value in respect of him to be used in accordance with section 95 of the Pension Schemes Act 1993 (ways of taking right to cash equivalent) in one or more of the ways set out in subsection (2) of that section, at his option.

(2) The conditions are that—

- (a) he ceased to be a member as described in paragraph (1)—
  - (i) where the transfer value is to be paid to an occupational pension scheme, before his NRD, or
  - (ii) otherwise, at least one year before his NRD;
- (b) he is a person who—
  - (i) has a statutory pension entitlement,
  - (ii) after ceasing to be a member as described in paragraph (1), has taken up non-local government employment in which he participates in an occupational pension scheme, or
  - (iii) after so ceasing, entered into a contract for a personal pension scheme or a self-employed pension arrangement or an appropriate policy;
- (c) he has duly made an application in writing to his fund authority for a transfer value to be paid and has not subsequently withdrawn it; and
- (d) if he ceased to be employed in his local government employment before 31st March 1972, his local government employer has consented to the payment of the transfer value.

(3) For the purposes of paragraph (2)(c) an application is only duly made if—

- (a) in the case of a request for the transfer value to be paid to an occupational pension scheme, it is made before the applicant’s NRD;
- (b) in any other case, it is made—
  - (i) at least one year before the applicant’s NRD, or
  - (ii) before the expiry of the period of six months beginning with the date on which he ceased to be a member,

whichever is the later; and

- (c) in the case of a person within paragraph (2)(b)(ii) or (iii), it is made within 12 months after the applicant took up the non-local government employment or, as the case may be, entered the contract (or such longer period as the local government employer may in any particular case allow).

(4) A person who has made an application under paragraph (2)(c) may withdraw it by giving notice in writing to his fund authority, but such a notice is of no effect if, before receiving it, the fund

authority have entered into an agreement with a third party to use the whole or part of that person's transfer value in one or more of the ways specified in section 95(2) of the Pension Schemes Act 1993.

- (5) A person who withdraws an application may make another.
- (6) Where a person is entitled to separate preserved benefits by virtue of regulation D12(1)(c)—
  - (a) he may make an application under paragraph (2)(c) in respect of all or any of those separate entitlements, and
  - (b) where his application does not relate to all of them, he may make a further application in respect of all or any of the remainder.

### **Time for payment of transfer value under regulation K2**

**K3.**—(1) Where an application is duly made to a fund authority under regulation K2(2)(c) in respect of any person, they shall pay a transfer value not later than—

- (a) twelve months after the date on which they receive the application, or
- (b) if—
  - (i) his NRD is earlier,
  - (ii) he ceased to be a member as described in regulation K2(1) at least one year before his NRD, and
  - (iii) he made his application under regulation K2(2)(c) before the expiry of the period of six months beginning with the date on which he ceased to be a member,

his NRD.

- (2) Where—
  - (a) proceedings before a court have been commenced against a person at any time before the expiry of the period of twelve months beginning with the date on which he ceased to be a member,
  - (b) those proceedings (including any proceedings on appeal) have not been concluded at least three months before the date by which the fund authority are required to pay the transfer value under paragraph (1), and
  - (c) it appears to the fund authority at that date that the proceedings may lead to all or any part of the benefits payable under these regulations to or in respect of that person being forfeited under regulation H4,

then the fund authority need not pay a transfer value in relation to that person until the expiry of the period of three months beginning with the date on which those proceedings are concluded.

### **Cases where right to transfer value excluded**

- K4.**—(1) A transfer value shall not be paid in relation to a person—
- (a) who has received any benefit (other than a return of contributions) under the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme, the 1974 regulation, the 1986 regulations or these regulations in respect of his local government employment,
  - (b) who ceased to be employed in local government employment on or after 6th April 1978, having attained state pensionable age, and whose accrued rights for the purposes of regulation K5 relate wholly or partly to service before he attained that age;
  - (c) in respect of whom a transfer value has been paid by the fund authority or a predecessor of that authority since he ceased to be employed in his local government employment, or

- (d) who, on becoming employed in approved non-local government employment became entitled to count service in his local government employment in relation to his approved non-local government employment, without any condition as to receipt of a transfer value.
- (2) Subject to paragraph (3), in relation to a person who has received a return of contributions in respect of local government employment in which he has ceased to be employed, a transfer value may only be paid in relation to any period in respect of which he is entitled to preserved benefits.
- (3) Where a person ceased to be employed on or after 1st April 1974, but before 1st January 1980, paragraph (2) only applies if when he ceased to be so employed he had—
- (a) an aggregate of at least five years' service which has to be taken into account as reckonable service and qualifying service under the 1974 regulations, or
  - (b) if he was subject to local Act scheme, an aggregate of at least five years' service which was to be taken into account under the Scheme for the purposes of determining whether he was entitled to benefit.

### **Amount of transfer value under regulation K2**

**K5.**—(1) The amount of any transfer value payable under regulation K2 shall be calculated in accordance with the following provisions.

(2) Subject to the provisions of this Part, a transfer value to be paid in accordance with the provisions of regulation K2 in respect of a person shall be an amount equal to the capitalised value—

- (a) of the rights which have accrued in respect of him under these regulations at the material date, and
- (b) of any associated rights under the Pensions (Increase) Act 1971<sup>(3)</sup> and the Pensions (Increase) Act 1974<sup>(4)</sup>,

less a sum in respect of any state scheme premium which is payable or has been paid and not recovered in respect of a period of service taken into account in the valuation of those rights.

(3) Subject to regulation K9, where the transfer value is, without reasonable cause or excuse, not paid before the expiry of the period of six months beginning with the material date, the transfer value mentioned in paragraph (2) shall be increased by—

- (a) interest, calculated on a daily basis over the period from the material date to the date on which the transfer value is paid at the rate set out in regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985<sup>(5)</sup>, or
- (b) the amount by which the transfer value falls short of what it would have been if the material date had been the date on which the transfer value was paid;

whichever is the greater.

(4) The reference in paragraph (2)(a) to rights which have accrued at the material date is a reference—

- (a) in the case of such a person as is described in regulation K2(6), to those rights in respect of which his application under regulation K2(2)(c) was made; or
- (b) if the person does not have a statutory pension entitlement by virtue of satisfying paragraph (a) of regulation D3, to the rights which would have accrued under regulation D11, if he had fulfilled one of the requirements mentioned in paragraph (1)(b) of that regulation;

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(3) 1971 c. 56.

(4) 1974 c. 9.

(5) S.I. 1985/1931.

and for the purpose of determining the accrued rights in respect of a widow's or widower's pension of a person who was unmarried on ceasing to be a member—

- (i) in the case of a man, if any part of his membership can be counted by virtue of regulation K14(1)(a) of these Regulations or regulation N8(1)(a) of the 1974 Regulations; and
- (ii) in the case of a woman, if any part of her membership is treated as membership after 5th April 1988 by virtue of regulation K14(1)(a) and (2)(b) of these Regulations, all the person's membership shall be taken into account.

(5) In paragraph (2) “capitalised value” means the capitalised value at the material date as determined by the fund authority, in such manner as may be approved by the Government Actuary or by an actuary authorised by him to act on his behalf for that purpose, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these regulations.

(6) In this regulation “the material date” means—

- (a) the date on which the person ceased to be employed in local government employment or to be a member as described in regulation K2(1), or
- (b) the date on which his application for payment of a transfer value is received by his fund authority,

whichever is later.

#### **Special provision as respects pre-6th April 1988 service**

**K6.**—(1) Subject to regulation K9, where—

- (a) a transfer value is payable to the trustees or managers of an approved non-local government scheme,
- (b) the service to which it relates includes relevant former service, and
- (c) the amount of the transfer value payable in respect of the relevant former service would be greater if it were calculated in accordance with the 1986 regulations as they had effect immediately before 6th April 1988,

then the amount of the transfer value attributable to the relevant former service shall be calculated on the basis mentioned in paragraph (c).

(2) In paragraph (1) “relevant former service” means service which the person was entitled to count as reckonable service before 6th April 1988.

#### **Reductions of the transfer value: unsecured GMPs, pre-1988 service and forfeiture**

**K7.**—(1) Where—

- (a) a person requests a transfer value to be paid—
  - (i) to an occupational pension scheme which is not contracted-out,
  - (ii) to a personal pension scheme which is not an appropriate personal pension scheme,
  - (iii) to a self-employed pension arrangement, or
  - (iv) in the case of a person who is entitled to benefits under regulation D9(1), to an occupational pension scheme which is contracted-out;
- (b) the trustees or managers of the scheme or arrangement are able and willing to have transferred to it only the liability for a member's accrued rights other than his and his surviving spouse's rights to guaranteed minimum pensions; and

- (c) he does not require the portion of his transfer value that represents his guaranteed minimum pension to be used in one of the ways specified in section 95(2)(b) and (c) of the Pension Schemes Act 1993<sup>(6)</sup>,

then his transfer value shall be reduced by the amount of a state scheme premium sufficient to meet the liability in respect of those guaranteed minimum pensions.

(2) Where—

- (a) a person has ceased to be a member by virtue of a notification under regulation B12 (leaving the Scheme), and  
 (b) his total period of membership before 6th April 1988 amounts to at least two years,

that person shall be entitled to a transfer value under regulation K2(1) in respect only of that part of his accrued rights which is attributable to his membership after 5th April 1988.

(3) Where—

- (a) a transfer value limited in accordance with paragraph (2) has been paid in respect of a person, and  
 (b) that person has subsequently ceased to be employed in local government employment—  
 (i) before his NRD, or  
 (ii) where regulation K2(3)(b) applies, at least one year before his NRD,

a right to a transfer value in respect of any part of his accrued rights to which, but for the operation of paragraph (2), he would have been entitled on so ceasing, shall accrue to him on the date of cessation and shall be valued accordingly.

(4) In relation to any person to whom paragraph (3) applies—

- (a) regulation K2(3)(b)(ii) shall have effect as if there were substituted for the words “a member” the words “employed in local government employment”; and  
 (b) the definition of “material date” in regulation K5(6) shall have effect as if the words “or to be a member, as described in regulation K2(1)” were omitted.

(5) For the purposes of paragraphs (2) to (4), where a person ceases to be employed in local government employment but enters again into local government employment, then if—

- (a) the interval between those two employments does not exceed one month; or  
 (b) the second of the employments results from the exercise of a right to return to work under section 39 or 41 of the Employment Protection (Consolidation) Act 1978<sup>(7)</sup> (right to return to work following pregnancy or confinement),

they shall be treated as a single employment unless the employee elected under regulation D12(1)(c).

(6) Where—

- (a) under regulation H4, any corresponding provision of earlier legislation or a local Act scheme, the employing authority direct that all or any of the benefits payable under these regulations in respect of a person shall be forfeited, and  
 (b) the direction is given before the last date on which the fund authority is required to pay a transfer value in respect of those benefits under these regulations and no such payment has been made,

any transfer value payable in respect of that person shall be reduced in proportion to the reduction in the total value of the benefits or, as the case may be, shall be withheld.

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<sup>(6)</sup> 1993 c. 48.

<sup>(7)</sup> 1978 c. 44; sections 39 and 41 were substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 23, Schedule 2.

### Minimum transfer values

**K8.**—(1) Subject to regulation K9, a transfer value paid by a fund authority in respect of a person shall be at least equal to the aggregate of the contributions, transfer values and sums mentioned in paragraph (2), less any state scheme premium paid or payable.

- (2) The contributions, transfer values and sums referred to in paragraph (1) are—
- (a) any contribution made by that person under Part C (other than contributions under regulation C24),
  - (b) any transfer values paid to the fund authority under this Part in respect of that person, and
  - (c) any sums paid under this Part by way of interfund adjustments in respect of that person to an authority which was his previous fund authority (within the meaning of regulation K20),

in so far as those contributions, transfer values or sums relate to the accrued rights in respect of which the transfer value is paid.

(3) A transfer value paid under this Part shall be at least equal in amount to the cash equivalent, if any, to which a person would otherwise be entitled under Chapter IV of Part IV of the Pension Schemes Act 1993<sup>(8)</sup> (including any state scheme premium which is paid or payable).

### Modifications where transfer is to club scheme

**K9.**—(1) Regulations K5(3), K6, K8(1) does not apply where the transfer value is to be paid to the trustees or managers of a club scheme.

- (2) In this Part “club scheme” means an occupational pension scheme which—
- (a) provides benefits calculated by reference to the remuneration of the participant;
  - (b) (except where it is established and maintained in the Channel Islands or the Isle of Man) is approved by the Commissioners of Inland Revenue under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988<sup>(9)</sup>;
  - (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
  - (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the statutory schemes and schemes made under section 7 of the Superannuation Act 1972<sup>(10)</sup>.

### General provisions about payment of transfer values

**K10.**—(1) The transfer value under regulation K2 shall be paid to the scheme managers by the fund authority out of their pension fund.

(2) The fund authority shall provide the scheme managers and the person to whom the transfer value relates with a written notice showing how it was calculated.

(3) A notice provided under paragraph (2) shall include a statement of the kind required by regulation J4(2)(c).

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<sup>(8)</sup> 1993 c. 48.

<sup>(9)</sup> 1988 c. 1.

<sup>(10)</sup> 1972 c. 11.

### **Termination of right to payment out of fund authority's pension fund**

**K11.**—(1) Where a transfer value is to be or has been paid under regulation K2, no other payment or transfer of assets shall be made out of the pension fund on account of the service to which the transfer value relates, except as provided in regulation K12.

(2) Paragraph (1) has effect notwithstanding anything to the contrary in the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme, the 1974 regulations, the 1986 regulations (except regulations J3 and J6) or any other provision of these regulations.

### **Revival of rights for certain Community scheme transferees**

**K12.**—(1) Schedule K1 shall have effect for the purpose of making provision as respects persons—

- (a) in respect of whom transfer values are paid under regulation K2 on their transfer to the Communities' scheme, and
- (b) who subsequently leave the scheme without rights to either an immediate or prospective pension.

(2) In this regulation and that Schedule “Communities scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities.

### *Transfers in*

### **Inward transfers of accrued rights from non-local government schemes etc.**

**K13.**—(1) Where a person who becomes a member has accrued rights to benefit under—

- (a) an occupational pension scheme.
- (b) a personal pension scheme,
- (c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Income and Corporation Taxes Act 1988, or
- (d) a self-employed pension arrangement,

he may within 12 months of becoming a member (or such longer period as the local government employer may allow) give written notice to his fund authority that he wishes them to accept a transfer value in respect of some or all of those accrued rights from the relevant transferor.

(2) In paragraph (1) the reference to accrued rights to benefit—

- (a) includes rights to preserve benefits and rights appropriately under section 19 of the Pension Schemes Act 1993<sup>(11)</sup>, but
- (b) excludes rights to benefits arising out of—
  - (i) an additional voluntary contributions provision or an additional voluntary contributions scheme (except where the payments securing such rights began before 8th April 1987), or
  - (ii) service as respects which there is an obligation to pay a sum by way of interfund adjustment under regulation K20).

(3) In paragraph (1) “the relevant transferor”, in relation to a member, means—

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(11) 1993 c. 48.

- (a) the trustees or managers of the scheme, contract or arrangement under which his accrued rights arise, or
- (b) in the case of such rights as mentioned in paragraph (2)(a), the trustees or managers of the scheme, contract or arrangement, or the insurance company, to which a payment in respect of his accrued rights has been made.

(4) Subject to paragraphs (5) and (6), where notice is given in accordance with paragraph (1), the transfer value shall be accepted by the fund authority and be credited to their pension fund, together with the amount of any limited revaluation premium under section 55(4) of the Pension Schemes Act 1993 repaid to the fund authority by the Secretary of State.

(5) Paragraph (4) only applies if—

- (a) the transfer value is offered on conditions which are consistent with the provisions of these regulations;
- (b) in the case of a person who—
  - (i) became employed in his local government employment before 1st January 1980, or
  - (ii) ceased to be employed in his non-local government employment before 31st March 1972,

his local government employer has consented to the transfer value being accepted; and

- (c) in the case of a person who became employed in his local government employment before 31st March 1972, he was employed in local government employment on that date.

(6) Subject to regulation K16, the fund authority only need to accept a transfer value if it exceeds the annual amount of the guaranteed minimum pension to which the person would have become entitled under these regulations at the request date as a result of the transfer value being accepted, multiplied by the appropriate factor.

(7) In paragraph (6)—

“the request date” means the date when the fund authority are requested to accept the transfer value; and

“the appropriate factor”, in relation to a person, means—

- (a) in the case of a person under 30 on the request date, 8;
- (b) in the case of a person at least 30 but under 40 on that date, 9;
- (c) in the case of a person at least 40 but under 50 on that date, 10; and
- (d) otherwise, 12.

### **Right to count service**

**K14.**—(1) Where a transfer value has been accepted under regulation K13 in relation to a person, he shall be entitled—

- (a) subject to regulation K17(4), and (6), to count a period calculated as mentioned in regulation K15 or, as the case may be, regulation K16 as period of membership for all purposes of these regulations (except that of determining whether there is any entitlement to benefit (other than any benefit under regulation D19)), and
- (b) to count as a period to which Part II of Schedule B6 applies all the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy, as certified by the trustees of that scheme or issuers of that policy, whether the transfer value relates to some or all of those accrued rights.

(2) For the purposes of making any collocation under these regulations a period of membership which may be counted under paragraph (1)(a) shall be treated—

- (a) where the person is a man, as a period after 5th April 1978, and
- (b) where the person is a woman, as a period after 5th April 1988.
- (3) A period which may be counted under paragraph (1)(b) shall count as its actual length.
- (4) The fund authority shall provide the person with a written notice stating—
  - (a) the periods of membership which he is entitled to count under paragraph (1)(a) and (b), and
  - (b) in the case of a person who became employed in his local government employment before 1st April 1980, whether or not his retirement pension is subject to reduction under regulation K18 or K19.
- (5) A notice under paragraph (4) shall contain a statement of the kind required by regulation J4(2)(c).

#### **Calculation of period of membership allowed under regulation K14(1)(a): non club schemes**

**K15.**—(1) Subject to regulation K16—

- (a) the period mentioned in regulation K14(1)(a) shall be calculated in a manner consistent with the methods adopted and assumptions made by the fund authority in determining the amount of transfer values to be paid to occupational pension schemes (other than club schemes) under regulations K5, K7, K8 and K21; and
- (b) due allowance shall be given for the expected increase in the pensionable remuneration of a local government employee between—
  - (i) the appropriate date, and
  - (ii) the NRD of the person in respect of whom the transfer value was paid.
- (2) In paragraph (1)(b)(i) “the appropriate date” means—
  - (a) the date on which the person in respect of whom the transfer value is paid became a member, or
  - (b) if more than twelve months later, the date on which the transfer value is received.

#### **Special provision where transfer is from a club scheme**

**K16.**—(1) Regulation K13(6) does not apply where the transfer value is offered by the trustees or managers of a club scheme.

- (2) Where the transfer value—
  - (a) is paid by the trustees or managers of a club scheme,
  - (b) represents all the rights relating to the person in that scheme,
  - (c) has been calculated in a manner consistent with the methods adopted and assumptions made by the fund authority in determining the amount of transfer values to be paid to club schemes, and
  - (d) is paid following an application made to the fund authority before the expiry of the period of twelve months beginning with the date on which the person becomes a member,
 regulation K15 does not apply and the period mentioned in regulation K14(1)(a) shall be equal to the period which, if used to calculate a transfer value to be paid to a club scheme, would produce an amount equal to the transfer value received by the fund authority.
- (3) In making the calculation referred to in paragraph (2), regard shall be had—
  - (a) to the person’s age,
  - (b) to the rate of remuneration used by the trustees or managers of the scheme making the payment in determining its amount,

- (c) to his normal retirement age,
- (d) to his marital status, and
- (e) to any other factor notified to the fund authority by the trustees or managers of the scheme making the payment as having been taken into account in determining its amount.

### **Increase in return of contributions**

#### **K17.—(1) Where—**

- (a) a person to whom regulation K14 applies ceases to be employed in employment in which he is a member in circumstances in which a return of contributions is payable to him under regulation C21(1),
- (b) if a transfer value had not been payable, he would have been entitled on the termination of his non-local government employment to a return of contribution under his non-local government scheme in respect of service to which the transfer value accepted under regulation K13 relates, and
- (c) no previous increase has been made under this regulation in relation to that service,

the sum due to him under regulation C21(1) shall be increased by an amount equal to the return of contributions (including any interest), which would have been paid to him under his non-local government scheme in respect of that service in the circumstances specified in sub-paragraph (b), if it had been paid when the transfer value was received by his fund authority.

(2) Where compound interest is payable on the contributions due to be so returned, compounded interest calculated at the same rate and in the same manner shall also be payable on the amount of the increase under paragraph (1) for the period beginning with the date on which the transfer value was received by the fund authority and ending with the date on which he ceased to be employed in the employment in which he was a member.

(3) Nothing in paragraphs (1) and (2) confers any entitlement to an increase on account of contributions which were returned to, and were not subsequently repaid by, the person who paid them.

#### (4) Where—

- (a) a sum due under regulation C21(1) is increased under paragraph (1) by an amount equal to the whole of the person's contributions in connection with the service to which the transfer value relates, and
- (b) that is the only service to which the transfer value relates,

his right to count a period of membership under regulation K14(1)(a) on account of the transfer value shall be extinguished when the increased payment is made.

#### (5) Where—

- (a) a sum due under regulation C21(1) is increased under paragraph (1), and
- (b) paragraph (4) does not apply,

then, when the increased payment is made, the period of membership the person is entitled to count under regulation K14(1)(a) on account of the transfer value is reduced to the appropriate fraction of the period of membership which he was entitled so to count before the payment was made.

#### (6) In paragraph (5) “the appropriate fraction” means the fraction of which—

- (a) the numerator is the period he is entitled to count under regulation K14(1)(b) (“the K14(1)(b) period”) reduced by the period of service on account of which the increase under paragraph (1) is made, and
- (b) the denominator is the K14(1)(b) period.

- (7) For the purpose of calculating the reduction under paragraph (5)—
- (a) the period of service mentioned in paragraph (6)(a) shall count at its actual length; and
  - (b) all periods are to be expressed in years and fractions of a year.

#### **National insurance modification for flat-rate retirement pension**

**K18.**—(1) Where—

- (a) a person to whom regulation K14 applies became employed in his local government employment before 1st April 1980;
- (b) on becoming so employed he did not enjoy unmodified status for the purposes of Part F of the 1974 regulations; and
- (c) his retirement pension is calculated by reference to a period of membership which includes the period which he is entitled to count under regulation K14(1)(a),

then his retirement pension shall be reduced in accordance with paragraph (2).

(2) Regulation F7 of the 1974 regulations shall be taken to have applied in relation to the period which he is entitled to reckon under regulation K14(1)(a) as if—

- (a) during that period he had been a person within Case B of Part F of the 1974 regulations;
- (b) that period were service after 31st August 1947; and
- (c) he had been a person who was not immediately before the appointed day entitled to the optant's rate for the purposes of the National Insurance (Modification of Local Government Superannuation Schemes) Regulations 1969(12).

#### **National insurance modification for graduated retirement pension**

**K19.**—(1) Where—

- (a) a person to whom regulation K14 applies became employed in his local government employment before 1st April 1980,
- (b) his non-local government scheme was a statutory scheme,
- (c) in calculating the amount of the transfer value accepted under regulation K13 a deduction was made in connection with graduated retirement benefit under section 36 of the National Insurance Act 1965(13), and
- (d) his retirement pension is calculated by reference to a period of membership which includes the period which he is entitled to count under regulation K14(1)(a),

then his pension shall be reduced by the amount specified in paragraph (2).

(2) The amount mentioned in paragraph (1) is the reduction in connection with graduated retirement benefit under section 36 of the National Insurance Act 1965 which would have been made to the person's pension under his non-local government scheme in relation to the service to which the transfer value relates if on ceasing to be employed in his non-local government employment he had—

- (a) reached state pensionable age, and
  - (b) become entitled to the immediate payment of a pension under that scheme instead of the payment of a transfer value.
- (3) The reduction under this regulation—
- (a) shall take effect on—

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(12) S.I. 1969/793.

(13) 1965 c. 51; section 36 was repealed with savings by the Social Security Act 1973 (c. 38), section 100(2)(b), Schedule 28.

- (i) the date on which the person's pension becomes payable, or
  - (ii) if later, the date on which he reaches state pensionable age, and
- (b) shall be additional to any reduction required by regulation K18.
- (4) The reduction under this regulation shall be treated for the purposes of regulations K5, K7, K8 and K21 as a reduction made in connection with graduated retirement benefit under section 36 of the National Insurance Act 1965.

*Interfund adjustments on changes of local government employment*

**Change of local government employment and fund authority: "interfund adjustments"**

- K20.**—(1) Subject to regulation K22, this regulation applies where—
- (a) a person who has ceased to be employed in a local government employment ("the previous employment") subsequently becomes employed in another local government employment ("the new employment"),
  - (b) the body maintaining the pension fund to which he became a contributor in the new employment ("the new fund authority") is different from the body maintaining the pension fund to which he was a contributor immediately before he ceased to be employed in his previous employment ("the previous fund authority"),
  - (c) he is a member of the Scheme in his new employment and is entitled to count in relation to that employment any period of membership which he was entitled to count in his previous employment.
- (2) Where this regulation applies the previous fund authority shall, subject to the following provisions of these regulations, pay out of their pension fund to the new fund authority for the credit of their pension fund a sum ("the interfund adjustment") of an amount calculated in accordance with regulation K21.
- (3) Where the pension fund referred to in paragraph (1)(b) has been closed, references in this regulation and in regulations K21 and K22 to the body maintaining that fund shall be taken—
- (a) in the case of the previous fund authority, as references to the body which would be liable to pay the person's pension in respect of the previous employment if it had been payable when the employment ceased; and
  - (b) in the case of the new fund authority—
    - (i) if when the fund was closed the person was not employed in local government employment, as references to the body which would be liable to pay his pension in respect of the new employment if he had been payable when the employment ceased; and
    - (ii) otherwise, as references to the body maintaining the pension fund to which he became a contributor when the fund was closed.

**Calculation of interfund adjustment payable under regulation K20**

- K21.**—(1) The interfund adjustment payable under regulation K20(2) in respect of a person—
- (a) if the total period of membership he is entitled to count in his new local government employment which he was also entitled to count in his previous local government employment exceeds 182 days, is to be calculated in accordance with paragraph (2); and
  - (b) otherwise—

- (i) if the person became employed in his new local government employment on or after 1st October 1981, is zero; and
  - (ii) in any other case, is twice the amount of the employer's primary contributions in relation to the period of membership.
- (2) The amount of the interfund adjustment referred to in paragraph (1)(a) is the product of—
- (a) the appropriate amount for a person of his age in years when he ceased to be employed in his previous local government employment,
  - (b) the annual rate of his remuneration in that employment at that time, and
  - (c) the length of the total period of membership in complete years (ignoring any residual period of 182 days or less and taking any residual period which exceeds 182 days as a complete year),
- less the amount of any additional contributory payments remaining outstanding at that time.
- (3) The appropriate amount mentioned in paragraph (2)(a) is—
- (a) if his age was under 30, 11 pence;
  - (b) if his age was at least 30 but under 40, 12 pence;
  - (c) if his age was at least 40 but under 50, 13 pence; and
  - (d) otherwise, 14 pence.
- (4) In ascertaining for the purposes of this regulation the length of the period of membership which a person is or was entitled to count, the period of membership is to be counted at the length at which it would be counted in calculating the amount of a retirement pension under regulation D5 except that—
- (a) any period which was reckonable as reckonable service under section 17 of the Act of 1937 (which related to teachers) is to be ignored,
  - (b) it is to be assumed that he had completed the payment of any additional contributory payments, and
  - (c) if some additional contributions under regulation D10 of the 1974 regulations (or any earlier corresponding provision), regulation C6 of the 1986 regulations or regulation C9 of these regulations, have been paid, but not all those for which he was originally liable, the appropriate proportion (within the meaning of regulation C19(8)) may be counted.
- (5) Subject to paragraph (6), in ascertaining for the purposes of this regulation the annual rate of a person's remuneration at the date on which he ceased to be employed in his previous local government employment ("the relevant date")—
- (a) the annual rate of any fluctuating element is to be estimated by reference to an average taken over a representative period,
  - (b) the annual rate of any benefit in kind is to be its estimated annual value at the relevant date,
  - (c) suspension or reduction of his remuneration because of absence from duty is to be disregarded,
  - (d) regard is to be had to any retrospective alteration of the annual rate resulting from a pay award promulgated by a national joint council or other negotiating body on or before the relevant date,
  - (e) if his remuneration is not calculated by reference to an annual rate but by reference to some other rate, the annual rate is to be derived from the applicable rate at the relevant date,
  - (f) if his previous employment was part-time, the annual rate of remuneration of a single comparable whole-time employment is to be used, and

(g) if the annual rate of his remuneration exceeds £100, it is to be rounded down to the nearest £100.

(6) If—

- (a) during the 13 years ending on the relevant date his remuneration was reduced,
- (b) his employing authority certified under paragraph 4 of Schedule DI that the reduction was material, and
- (c) his annual rate of remuneration immediately before the reduction (ascertained on similar principles to those in paragraph (5)) was greater than the annual rate of remuneration on the relevant date,

it is to be assumed for the purposes of this regulation that he was earning at the higher rate at that date.

(7) Where the person—

- (a) has made a payment to his new fund authority under regulation D1(2) of the 1974 regulations, or
- (b) has made them a payment which by virtue of regulation K28(4) of or paragraph 8 of Schedule M2 to these Regulations (modification in certain cases where person returns to local government employment) has the same effect,

the interfund adjustment payable under regulation K20 is to be reduced by an amount equal to that payment.

(8) If the period beginning with the relevant date and ending on the date of payment of the interfund adjustment is or exceeds 6 months, compound interest is payable on the amount of that adjustment (after any reduction falling to be made under paragraph (7))—

- (a) at the rate of 6 per cent. with yearly rests for each complete period of a year ending before 1st April 1977, and
- (b) at the rate of 2.25 per cent. with three-monthly rests for each complete period of 3 months beginning after 31st March 1977.

### **Forfeitures**

**K22.**—(1) Regulation K20 does not apply if a direction has been made at any time under regulation H4 (forfeiture of rights) or any corresponding provision of any earlier enactment in relation to the member's membership in his previous employment.

(2) Where—

- (a) apart from paragraph (1), regulation K20 would apply, and
- (b) a right to benefit under these regulations is retained,

the previous fund authority shall pay out of their pension fund an interfund adjustment to the new fund authority for the credit of their pension fund of an amount equal to the actuarial value of the remaining benefits.

(3) In this regulation “previous fund authority”, “new fund authority” and “previous employment” have the meaning given in regulation K20.

*Transfers of certain members who are eligible to join approved non-local government schemes*

### **Certain members who become subject to other pension schemes in the same employment**

**K23.**—(1) This regulation applies to a person if—

- (a) he is a member by virtue of being an employee to whom an admission agreement applies or in an employment under a passenger transport executive;

- (b) the body employing him in that employment (“the relevant employment”) can make other provision for his superannuation under an approved non-local government scheme;
- (c) he gives written notice to that body (and to the appropriate administering authority, if different) that he wishes this regulation to apply to him and they consent to its doing so.

(2) When a person to whom this regulation applies becomes subject in the relevant employment to an approved non-local government scheme (“the new scheme”), he shall be treated for the purposes of these regulations (except regulations C21 (return of contributions) and K2 to K12) as having ceased to hold the relevant employment.

(3) Unless a person to whom this regulation applies has given notice under regulation K24(3)(b), he may, on the actual termination of the relevant employment (but not before), request the payment of a transfer value under regulation K2.

(4) If a transfer value is requested as mentioned in paragraph (3)—

- (a) regulations K2 to K12 apply as if the person had continued to be employed in his local government employment until the date of the actual termination of the relevant employment, but
- (b) regulations K5, K7, K8 and K21 apply as if his local government employment had ended on the day before he became subject to the new scheme.

### **Requests for transfer payments: regulation K23 employees and employees of ineligible employers**

**K24.**—(1) This paragraph applies—

- (a) to a person who ceases to be a member because—
  - (i) the undertaking in which he is employed is transferred to a body who is not a LGPS employer nor a body which has entered or is eligible to enter into an admission agreement; or
  - (ii) the body by whom he is employed ceases to be a LGPS employer or a body which has entered or is eligible to enter into an admission agreement,
 and in respect of whom the body employing him after the transfer date can make other provision under an approved non-local government scheme; and
- (b) to a person to whom regulation K23 applies; and in this regulation “the transfer date” means—
  - (i) in the case of a person within paragraph (a)(i), the date of transfer of the undertaking,
  - (ii) in the case of a person within paragraph (a)(ii), the date his employer ceases to be such an employer as there mentioned, and
  - (iii) in the case of a person within paragraph (b), the date on which he becomes subject to an approved non-local government scheme.

(2) A person within paragraph (1)(a) shall be treated for the purposes of these regulations as having ceased to hold his employment on the transfer date.

(3) Where—

- (a) a person to whom paragraph (1) applies has not attained state pensionable age on the transfer date; and
- (b) before that date or, with the consent of his employing authority, the appropriate administering authority and the scheme managers of the transferee scheme, before the expiry of the period of three months beginning with that date—

- (i) he gives written notice to the appropriate administering authority (and to his employing authority, if different) that he wishes to transfer his pension rights under these regulations to the transferee scheme, and
- (ii) the scheme managers of the transferee scheme, the appropriate administering authority (and his employing authority, if different) have each consented,

then, subject to paragraph (6), the appropriate administering authority shall set aside the appropriate part of the appropriate pension fund (“the transfer payment”), whether in cash or in assets or both, and pay or transfer it to the scheme managers of the transferee scheme for the benefit of the relevant beneficiaries.

(4) For the purposes of paragraph (3), the appropriate part of the appropriate pension fund is the amount determined by the actuary of the appropriate pension fund (on the basis of actuarial assumptions specified by him) to be equal to the value at the transfer date of the actual and potential liabilities of the fund which have then accrued in respect of the relevant beneficiaries, after making such adjustments as he thinks fit as respects—

- (a) any period between the transfer date and the date of actual payment of the transfer value; and
- (b) such other matters as he thinks fit;

and in paragraph (3) and this paragraph “relevant beneficiaries” means the member or members in respect of whom the transfer payment is made and those persons who under these regulations are or may become entitled to benefit through him or them.

(5) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund or, if there is more than one employing authority involved, each shall bear such part of the costs as the actuary of the fund determines.

(6) Where a transfer payment in respect of a person is made under paragraph (3)—

- (a) if the transferee scheme is contracted-out and the scheme managers undertake to accept liability for that person’s guaranteed minimum pension, no deduction shall be made for that pension from the transfer payment;
- (b) otherwise, there shall be deducted from it—
  - (i) the amount of any transfer premium which may be paid under section 55(3) of the Pension Schemes Act 1993(14), or
  - (ii) the amount of any contributions equivalent premium payable pursuant to section 55(2) of that Act,

and such amount shall be used either in paying such a premium or, if the appropriate administering authority think fit, in preserving the liability for the guaranteed minimum in the appropriate pension fund; and

- (c) the appropriate administering authority—
  - (i) shall certify to the scheme managers of the transferee scheme the amount included in the transfer payment which represents the person’s contributions and interest on them, and
  - (ii) may require them to undertake to treat only those amounts as employee’s contributions in the transferee scheme.

(7) The appropriate administering authority—

- (a) shall provide the person transferring his pension rights with sufficient information in writing to check that the pension rights he will acquire under the new scheme are at least

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(14) 1993 c. 48.

equivalent to those which he would have obtained if a transfer value had been paid to the scheme managers of the transferee scheme under regulation K2; and

(b) shall not consent under paragraph (3)(b)(ii) unless they are satisfied of that fact.

(8) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made out of the pension fund on account of service or employment to which the transfer payment under this regulation relates.

(9) Paragraph (8) applies notwithstanding anything in the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme or any provision of the 1974 regulations, the 1986 regulations or these regulations.

(10) In this regulation “undertaking” has the same meaning as in the Transfer of Undertakings (Protection of Employment) Regulations 1981(15).

### **Application of regulation K24 in case of certain transfers involving admission agreements**

**K25.**—(1) Where—

- (a) an admission agreement (“the first agreement”) made by a body with an appropriate administering authority ceases to have effect; and
- (b) on the cessation of the first agreement another admission agreement (“the second agreement”) between that body and a different appropriate administering authority (“the second authority”) takes effect,

then regulation K24 applies (and regulations K20 to K22 do not apply) as if—

- (i) a person employed by that body when the second agreement took effect were a person within paragraph (1)(a) of that regulation,
- (ii) the pension fund maintained by the second authority were the transferee scheme,
- (iii) the second authority were the scheme managers, and
- (iv) the date the second agreement takes effect were the transfer date.

(2) Where—

- (a) an undertaking (as defined in regulation K24(10)) is transferred from an employing authority (“the first employer”) to a body which enters into an admission agreement with an appropriate administering authority (“the new authority”) in respect of one or more persons who were members in relation to their employment with the first employer and remain members in relation to their employment with the new authority; and
- (b) the new authority is different from the appropriate administering authority maintaining the fund which was their appropriate pension fund immediately before the transfer, and
- (c) each of those members is entitled to count in relation to his employment with the new authority any membership he was entitled to count in his employment with the first employer,

then regulation K24 applies (and regulations K20 to K22 do not apply) as if—

- (i) such a member were a person within paragraph (1)(a) of that regulation,
- (ii) the pension fund maintained by the new authority were the transferee scheme,
- (iii) the new authority were the scheme managers, and
- (iv) the date the agreement takes effect were the transfer date.

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(15) *S.I. 1981/1794*; regulation 2(1) was partially repealed by the Trade Union Reform and Employment Rights Act 1993 (c. 19), sections 33(1), (2), 51, Schedule 10.

### *Payments for combined benefits*

#### **Liability for combined benefits**

**K26.**—(1) Where—

- (a) a benefit under Part II or paragraph 19(2) of Schedule D5 (“the combined benefit”) becomes payable out of a pension fund (“the new fund”), and
- (b) a benefit (“the replaced benefit”) would otherwise have become or remained payable out of another fund,

the authority maintaining the new fund (“the new authority”) shall as soon as is reasonably practicable notify the authority maintaining the other fund (“the previous authority”) that the combined benefit has become payable.

(2) On being notified under paragraph (1), the previous authority shall, as from the date from which the combined benefit became payable and, in the case of a benefit which is a pension, so long as it remains payable, make payments to the new authority at an annual rate equal to that of the replaced benefit (including any increases which have become payable in that benefit).

(3) The payments to be made under paragraph (2)—

- (a) in so far as they are made in respect of a benefit which is a pension, shall be made on 31st March, 30th June, 30th September and 31st December (unless longer intervals are agreed by the two authorities); and
- (b) in so far as they are made in respect of a benefit which is a lump sum, shall be made on the first of those dates to follow the date on which the combined benefit first becomes payable (unless the two authorities agree otherwise).

(4) Where a previous authority are liable to make payments to a new authority under paragraph (2), that liability may be discharged—

- (a) in a case where no previous payments have been made in respect of the liability in question, by the payment of a capital sum of an amount equal to the amount of the transfer value that would have been payable by the previous authority if, on the date on which the election under paragraph 19(1) of Schedule D5 or, in the case of a benefit under paragraph 19(2) of that Schedule, the date of his death, the member had duly applied under regulation K2(2) (c) for a transfer value to be paid to an appropriate personal pension scheme (assuming he had been eligible to do so); and
- (b) in a case where previous payments have been made in respect of the liability in question, by the payment of a capital sum of an amount equal to the capitalised value at the date of that payment of the outstanding payments which would otherwise be due in respect of that liability;

and the capitalised value referred to in paragraph (b) shall be determined in such manner as may be approved by the Government Actuary, having regard to such factors as he considers appropriate, (and he may issue such Tables as he considers appropriate for the purposes of such determinations).

(5) Where after the combined benefit became payable the previous authority have made any payment in respect of the replaced benefit to a person appearing to them to be entitled to it, the amount of that payment shall be deducted—

- (a) by the new authority from the combined benefit, and
- (b) by the previous authority from the amount to be paid by them under paragraph (2).

(6) If all or part of any sum due under this regulation remains unpaid at the end of the period of one month after the later of—

- (a) the date on which it becomes due, and

(b) the date of receipt of notification under paragraph (1),  
the new authority may require the previous authority to pay interest, calculated at one per cent. above base rate on a day to day basis from the due date of payment to the date of actual payment, and compounded with three-monthly rests, on the amount remaining unpaid.

(7) Payments under paragraphs (2) and (4) and interest paid under paragraph (6) shall be carried and credited to the new fund.

### *Transfers to and from Scottish local government employment*

#### **Transfers to and from Scotland**

**K27.**—(1) Where a person becomes employed in a local government employment after having ceased, at any time after 30th March 1972, to hold a relevant Scottish employment, these regulations or, as the case may be, the 1974 regulations or the 1986 regulations shall be deemed to have become applicable to the person on the cessation of his relevant Scottish employment as if that employment had been local government employment (but as if the appointed day for the purpose of the 1974 regulations had been 16th May 1974).

(2) In paragraph (1) “relevant Scottish employment” means—

- (a) in relation to any time before 16th May 1974, employment by virtue of which the person was, or was deemed to be, a contributory employee within the meaning of the Local Government Superannuation (Scotland) Act 1937<sup>(16)</sup> or a local Act contributor within the meaning of that Act, and
- (b) in relation to any time after 15th May 1974, employment by virtue of which the person was, or was deemed to be, a pensionable employee within the meaning of the Local Government Superannuation (Scotland) Regulations 1987<sup>(17)</sup>.

(3) The reference in paragraph 1(1) of Schedule D5 (reduction of retirement pension on re-employment) to employment with a LGPS employer is to be construed as including a reference to employment with any scheduled body (as defined in those regulations).

(4) In the case of a person who, after ceasing to be employed in a local government employment, has become employed in a local government employment (as so defined), regulations K20 to K22 and K26(4) apply as if the latter employment had been a local government employment.

### *Overseas employment*

#### **Overseas employment**

**K28.**—(1) Where any person to whom regulation 3 of the Local Government Superannuation (Overseas Employment) Regulations 1985<sup>(18)</sup> applies has not made an election under paragraph (3) of that regulation, these regulations apply to him with the following modifications.

(2) Regulation D12 (further provisions about preserved benefits) applies as if—

- (a) after paragraph (1)(d) there were inserted the words  
“or  
(e) if the total period of his membership is less than 5 years.”; and
- (b) in paragraph (2) after paragraph (b) there were inserted the words—

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<sup>(16)</sup> 1937 c. 69.

<sup>(17)</sup> S.I. 1987/1850 (S. 128).

<sup>(18)</sup> S.I. 1985/1922.

“but no such election may be made where paragraph (1)(e) applies”.

- (3) Schedule B6 applies as if—
- (a) in paragraph 5 after paragraph (e) there were inserted—
    - “(ee) regulation D12(1)(e) (cessation of right to preserved benefits: overseas service cases)”; and
  - (b) after paragraph 10 there were inserted—

*“Overseas service*

**10A.** Any period which, if Part II of the Superannuation (Local Government and Overseas Employment) Interchange Rules 1969(**19**) had applied to him, would have been a period of overseas employment (within the meaning of those rules) counts as a period to which this Part of this Schedule applies.”.

(4) Preserved benefits (including any increases under the Pensions (Increase) Act 1971(**20**) and the Pensions (Increase Act) 1974(**21**) are subject to reduction, but on a return to local government employment previous service becomes reckonable on repayment of a sum equal to the amount of returned contributions, as if regulations D1(2) (with the substitution for “the appointed day” of “6th January 1986”), D1(3) and K1(7) of the 1974 regulations had continued to have effect.

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(19) S.I. 1969/975; rules amended by the Local Government Superannuation (Overseas Employment) Regulations 1985 (S.I. 1985/192) in relation to certain employees.

(20) 1971 c. 56.

(21) 1974 c. 9.